

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

CHILDREN'S HOSPITAL AND REGIONAL  
MEDICAL CENTER<sup>1</sup>

Employer

and

Case 19-RC-13936

UNITED FOOD & COMMERCIAL WORKERS  
UNION, LOCAL 1001, chartered by UNITED FOOD  
& COMMERCIAL WORKERS INTERNATIONAL  
UNION, AFL-CIO, CLC

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>2</sup> in this proceeding,<sup>3</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

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<sup>1</sup> The Employer's name appears as corrected at hearing.

<sup>2</sup> The parties filed briefs, which have been considered.

<sup>3</sup> The parties' written stipulation of April 4, 2000 is hereby received into the record as Board Exhibit 4.

All technical employees employed by the Employer at its Seattle, Washington, facility; but excluding all guards and supervisors as defined by the Act, all biomedical technicians and all other employees.

## FACTS

The Employer is engaged in the operation of an acute care pediatric hospital in Seattle, Washington. Petitioner seeks a unit of all technical employees, including biomedical technicians (“BMTs”).<sup>4</sup> The Employer contends that its BMTs should not be included in the unit, but rather that they can be represented only in a unit of skilled maintenance employees. The Employer currently recognizes two units of skilled maintenance employees: licensed steam engineers, represented by International Union of Operating Engineers Local 286, (“Engineers”)<sup>5</sup> and electricians, carpenters, and painters, represented by Seattle/King County Building & Construction Trades Council (“Council”).<sup>6</sup>

At hearing, the parties stipulated that the unit of technical employees does include the following: anesthesia technicians; cardiovascular technicians; care coordinator assistants; cast technicians; licensed practical nurses; nuclear medicine technologists; radiology technologists I; respiratory therapists-reg; respiratory therapists II; spec. CT/MRI technologists; spec. procedure technologists; surgical technologists I; surgical technologist II; ultrasonographers; and pharmacy technicians. The record does not specifically reflect whether or not there are any other technicals employed by the Employer.

There are four BMTs. They are supervised by John Pierce, manager of biomedical engineering. Pierce was first employed by the Employer as a biomedical technician in 1985.<sup>7</sup> The BMTs repair and calibrate equipment, perform safety checks of equipment and make unspecified modifications to equipment. They work on electronic patient care equipment, such as ventilators, patient monitoring systems, blood pressure machines, and electrosurgical machines. They also work on the nurse call system, a complex computer system which allows patients to call the nurse station for assistance, monitors badges worn by nurses which permit nurses to be located throughout the hospital, and monitors the smoke alarms. In their work they use small hand tools such as screwdrivers and pliers, micrometers, oscilloscope signal generators and electronic test equipment.

BMTs are required to have at least an associate degree in the relevant field. Two have certification from national organizations. The Employer prefers certification, but does not require it. One

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<sup>4</sup> “BMT” will be used to refer to the Employer’s biomedical technicians. “Biomedical technicians” will be used to refer to industry biomedical technicians generically.

<sup>5</sup> A hearing in this matter was held on March 28 and 29, 2000. During the course of the hearing, Engineers filed a written motion to intervene, but did not appear on the record. On April 4, 2000, the parties acknowledged by stipulation that IUOE Local 286 had withdrawn its motion to intervene; I take independent administrative notice of that withdrawal.

<sup>6</sup> I take administrative notice of the fact that Council was notified as a potential intervenor. Further, although not in the record, Council stated that it did not “claim” the BMTs and was not seeking representation.

<sup>7</sup> From 1985 until 1994, biomedical technicians reported to Steve Scheibe, who is the over-all supervisor of the skilled maintenance employees. Scheibe reports to Ruth Benfield, administrator of regional and ambulatory services. In 1994, as part of an “administrative realignment,” biomedical technicians were reassigned to Jennifer Abermanis, administrator of systems and logistics, who supervises groupings of technical, clerical and other employees.

BMT was sent to a two-week course in Batesville, Indiana, offered by the manufacturer of the nurse call system. That person trains the others in how to troubleshoot the system.

BMTs are paid within a range of about \$15.00 to \$20.00 per hour.<sup>8</sup> They normally work from 7:30 a.m. to 3:30 p.m., and one is on-call thereafter. The on-call person receives a standby rate of \$3.00 per hour to carry a pager. BMTs have occasional contacts with the various hospital employees who use the electronic equipment, including nurses and technical employees involved in patient care. They report to an area on the third floor of D wing of the hospital, where they have a shop area.<sup>9</sup> They also work on equipment at locations throughout the hospital.

## CONCLUSIONS

The Board defines technical employees as “those who do not meet the strict requirements of the term professional employee as defined in the Act but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses.” *Meriter Hospital*, 306 NLRB 598 (1992). One typical aspect of hospital technical employees is that they provide health care or services of one kind or another to patients, whereas skilled maintenance employees normally work on building systems or equipment. See, generally, the Board’s discussion of technical and skilled maintenance units, in connection with rulemaking of the Hospital Units Rule (“Rule”),<sup>10</sup> reproduced in 284 NLRB, at 1553-54 and 1557.

The record herein is unfortunately brief with respect to the skills and duties of the BMTs, and there is no evidence with respect to whether they exercise any degree of independent judgment in carrying out their duties. From the record and the listed job titles, however, it is clear that the technicals sought provide various types of services to patients, while the BMTs work on portable or fixed equipment and building systems.

A unit of “all technical employees” is one of the eight units appropriate in acute care hospitals. See Rule. In its Rulemaking proceedings, the Board noted, in its discussion of skilled maintenance units, that “[t]he only [other] employee classification performing work similar to that performed by traditional craft or trade-type maintenance employees are biomedical technicians. Biomedical technicians work on and repair sophisticated computer-based equipment, and because of both their skills and training share a community of interest with other skilled maintenance employees and in many instances have already been included in some such units.” [Citations omitted.] However, the Board did not make a specific unit assignment of biomedical technicians in the Rule.

The Board has routinely included biomedical technicians in units of skilled maintenance employees, regardless of which party sought their inclusion or exclusion; in fact, I find no case where they were placed in a technical unit. In *San Juan Regional Medical Center*, 307 NLRB 117 (1992) the petitioner sought a unit of skilled maintenance employees, including biomedical technicians, while the employer contended that biomedical technicians were technical employees. The Board included

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<sup>8</sup> Acknowledged Unit employees’ wages range from about \$11.00 to \$22.56 per hour, with a few exceptions. Respiratory therapists II and spec. CT/MRI technologists can go as high as \$27.60, and ultrasonographers as high as \$33.83.

<sup>9</sup> All skilled maintenance employees report to an area in the basement of the hospital.

<sup>10</sup> *National Labor Relations Board Rules and Regulations*, Section 103.30.

biomedical technicians in the skilled maintenance unit, noting that the technicals were “primarily diagnostic”, while the biomedical technicians worked on systems or equipment. The Board, in distinguishing a case cited by one of the parties in *San Juan*, noted that it had once excluded a craftsperson from a skilled maintenance unit, but only because the individual’s primary duties included patient care. *Jewish Hospital*, 305 NLRB 955 (1991). In *Ingalls Memorial Hospital*, 309 NLRB 393 (1992), the petitioner sought a unit of skilled maintenance employees. The Board agreed with employer contentions, over the objections of the petitioner, that biomedical technicians should be included in the unit. It was noted that they, like the rest of the unit, worked on building systems and equipment, and were administratively attached to the plant operating department. In *Mercy Health Services North*, 311 NLRB 1091 (1993), the petitioner sought a unit of technical employees. The employer contended that biomedical technicians were technical employees and should be included in the unit. The Board upheld the Regional Director’s conclusion that biomedical technicians were skilled maintenance employees, rather than technical employees, noting that the biomedical technicians had no direct patient care functions and had common supervision with the skilled maintenance employees.

We must note that the Rule sets the standard appropriate units in the hospital industry. Thus, unlike the usual industrial situation, there are not multiple potentially appropriate units, and a petitioner does not get to define its unit as long as it is *an* appropriate unit; rather, the units are fixed. Thus, the issue here is whether BMTs are “technical” or “skilled maintenance,” under the Rule. The answer is obvious; they are skilled maintenance, for the reasons cited in the above discussion, and in the Rulemaking proceeding, primarily that they work on “things”, not patients. I also note that their administrative attachment is neither to a skilled maintenance group nor to a clearly technical group, making this factor largely irrelevant.

An arguable exception to the fixed hospital units might be premised on *Michael Reese Hospital and Medical Center*, 242 NLRB 322 (1979). There, the petitioner sought a unit of chauffeur-drivers, a classification which had existed, unrepresented, for five years. The employer contended that the chauffeur-drivers could only be represented in the unit of service and maintenance employees, represented by another labor organization for ten years. The service/maintenance union had twice attempted to represent the drivers by non-election means, but had been unsuccessful in getting employer agreement. Then, for the next three years, it had done nothing to secure representation. The Board, in finding a *separate* unit of chauffeur-drivers to be appropriate, said that, “[t]o dismiss the petition and force the chauffeur-drivers to look to the service and maintenance unit for representation would, we believe, relegate them to a perpetual lack of representation and violate our duty under Section 9(b) to accord employees the fullest freedom to exercise their rights guaranteed by the Act.”

I find this case inapposite. First, it is an early case, created before the Board established appropriate units via the Rule.<sup>11</sup> The Board will not deviate from its established Rule units absent agreement of the parties or extraordinary circumstances. The BMTs clearly belong in the skilled maintenance unit. To place them in the technical unit would amount to an exception to the Rule – something the Board does not countenance lightly. Second, there is no evidence the BMTs would be stranded, without any chance of representation. While the Council, which represents the skilled maintenance unit, did not intervene, and stated by letter that they did not claim or seek the BMTs, I don’t find that determinative. The record contains no evidence the BMTs have ever sought representation by Council and been rebuffed, or that they now wish representation by Petitioner, or that Council’s failure to intervene is other than a temporary gesture under the well-known constraints of AFL-CIO no-raid covenants or on general “brotherhood” principles, to give Petitioner a “clear shot” at a very small group

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<sup>11</sup> This case has not been cited post-Rule in published Board decisions.

of employees.<sup>12</sup> Should later events demonstrate continuous representational homelessness for the BMTs, this matter could be revisited.<sup>13</sup>

Accordingly, the BMTs are hereby excluded from the otherwise agreed-upon unit.

There are approximately 124 employees in the unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by UNITED FOOD & COMMERCIAL WORKERS UNION LOCAL 1001, chartered by UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, CLC.

### **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be

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<sup>12</sup> Employer has argued that Engineers could also provide a "home" for the BMTs." I reject this possibility, since I discern little more reason to place them in a steam plant unit than in a unit of RNs.

<sup>13</sup> The record does not indicate whether there are, or are not, other unrepresented skilled maintenance types.

of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, on or before April 27, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted. To speed preliminary checking and the voting process itself, the names must be alphabetized.

#### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 4, 2000.

**DATED** at Seattle, Washington, this 20th day of April, 2000

/s/ PAUL EGGERT

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